



Having reviewed the record and considered the arguments made by the parties, the Appeals Board finds and concludes that claimant has not met her burden of establishing that she sustained an accidental injury arising out of and in the course of her employment. The Award by the Assistant Director is, therefore, affirmed.

Claimant testified that she felt sharp pains in her neck and shoulder while lifting a case of emesis basins above her head to place them on a shelf in the supply room of respondent Golden Plains Nursing Center. According to claimant this incident occurred on Friday, January 15, 1993. She testified that she filled out an incident report that day. She then went to Cindy DeCoster's office to deliver the report but the office was locked and claimant placed the incident report back in her own desk. The symptoms worsened over the weekend.

On Monday, January 18, 1993, claimant went to see her family physician, Dr. Elwyn J. Taylor. After seeing Dr. Taylor she returned to work and spoke with JoAnn Crannell, whom claimant considered the personnel manager at the time. According to the claimant, JoAnn Crannell advised her that she could not make a workers compensation claim because a workers compensation claim had to be made within 72 hours of the incident.

Claimant's version of the incident is contradicted by the history shown in the medical records of the various physicians treating claimant's neck symptoms. Dr. Taylor's records of that first visit on January 18, 1993 state:

"Patient was at work at Golden Plains today when she began to have more and more sharp pain in the area of her right shoulder. She is complaining of pain particularly in the area of the trapezius muscle on the right side. She is not sure why it hurts. She didn't have any particular problem with a fall or injury of which she is aware. She has had this in the past she tells me. She doesn't know why it came on today."

The note of the registered nurse for that same date states:

"Debbie came into the Outpatient Department, was complaining of pain and spasms in her right shoulder. Stated that she had just woke up Saturday morning . . . with the pain."

Dr. Taylor referred the claimant to Dr. Roger P. Blitz. Dr. Blitz ordered physical therapy and later referred the claimant to Dr. Paul S. Stein. The records of Dr. Blitz, the records of the physical therapist and the records of Dr. Stein all contain a history similar to that shown in the records of Dr. Taylor. Dr. Blitz's records indicate:

"This patient woke up on 1-16-93 with pain in her right cervical region down into the medial scapular border on the right."

The records of the physical therapist, Rick Jones, state:

"The patient denies any injury or other unusual activity which may have precipitated her discomfort."

The records from Dr. Stein state:

"The patient states the problem started two weeks ago. She was starting to get out of bed and twisting and had acute pain in her neck and right arm and the pain has stayed since then."

Claimant's counsel argues that the history in these medical records is explained by the fact claimant was told she could not make a workers compensation claim. Claimant's counsel points out that JoAnn Crannell acknowledged in her deposition that she could have told claimant she had to report accidents within 72 hours.

The Appeals Board finds this explanation insufficient to overcome the consistent history given in the medical records and so finds for several reasons. First, the initial history given to Dr. Taylor preceded the conversation with JoAnn Crannell. Second, while JoAnn Crannell does not deny having told claimant that she needed to report an incident within 72 hours, neither does she remember having told her so. In addition, she is not asked and does not testify that she might have told claimant that she could not make a workers compensation claim. Finally, the explanation given by claimant's counsel is not supported by testimony from the claimant. Claimant does not testify that she failed to give a history of a work-related accident because she thought it would not be allowed as a workers compensation claim. In fact, in several instances, she testifies that she did tell the health care provider of the incident at work.

For the above and foregoing reasons the Appeals Board is not persuaded that claimant did sustain an accidental injury arising out of and in the course of her employment. The decision by the Assistant Director should be affirmed.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Assistant Director Brad E. Avery dated February 9, 1996, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Trish Rose, Hutchinson, KS  
Richard J. Liby, Wichita, KS  
Brad E. Avery, Assistant Director  
Philip S. Harness, Director